

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
DIEGO ALEJANDRO AGUILAR,
Defendant.

Case No. [18-cr-00275-LHK-1](#) (JSC)

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

Re: Dkt. No. 40

As the Hon. Lucy Koh is no longer a district judge on the Northern District of California, this matter has been assigned to Hon. Jacqueline Scott Corley as the General Duty Judge. The Court in receipt of a letter from defendant Diego Alejandro Aguilar seeking appointment of a public defender to assist him with challenging the Bureau of Prison's computation of his First Step Act Credits.

A defendant challenging the manner, location, or execution of a sentence must ordinarily rely on a petition under 28 U.S.C. Section 2241. *See Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000). The Bureau of Prisons (BOP), rather than the sentencing court, calculates a federal prisoner's entitlement to sentencing credit in the first instance. *See United States v. Wilson*, 503 U.S. 329, 335, (1992). "The BOP's calculation of sentencing credit constitutes a sentence's execution and may be challenged in a Section 2241 petition." *United States v. Pratt*, No. 2:01-CR-00152 WBS AC, 2019 WL 3229617, at *2 (E.D. Cal. July 18, 2019), report and recommendation adopted, No. 2:01-CR-0152 WBS AC, 2019 WL 3769079 (E.D. Cal. Aug. 9, 2019) (citing *Zavala v. Ives*, 785 F.3d 367, 370 n.3 (9th Cir. 2015); *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). A federal prisoner must file a Section 2241 petition in the district where he is incarcerated, not the district that sentenced him. *See Hernandez*, 204 F.3d at 865.

1 Thus, to challenge the calculation of his credits, Mr. Aguilar must file a petition under 28
2 USC § 2241. Further, as explained above, the petition must be filed in the district where he is
3 incarcerated, not the district of his sentencing. He appears to currently be incarcerated at Atwater,
4 in Merced County, California, and thus in the Eastern District of California. (Dkt. No. 40.) For
5 this reason, his request for appointment of counsel from the Federal Defenders Office for the
6 Northern District of California must be denied. In addition, there is no constitutional right to the
7 appointment of counsel for post-conviction proceedings. *See Pavulak v. Blanckensee*, 14 F.4th
8 895, 897 (9th Cir. 2021), cert. denied sub nom. *Pavulak v. Warden, FMC Butner*, 142 S. Ct. 1188
9 (2022).

10 This Order disposes of Docket No. 40.

11 **IT IS SO ORDERED.**

12 Dated: April 8, 2022

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15 JACQUELINE SCOTT CORLEY
16 United States District Judge
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